REVIEW DEPARTMENT OF THE STATE BAR COURT

IN BANK*

In the Matter of	)	No. **04-O-10090**
	)	
ERIC W. CONNER,	)	**ORDER**
	)	
A Member of the State Bar.	)	
	)	

Good cause shown, the State Bar's request to designate the opinion on review for publication filed on February 28, 2008, is hereby granted.

Acting Presiding Judge

*Presiding Judge Joann Remke did not participate.

PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

Filed February 8, 2008

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of **ERIC W. CONNER**, A Member of the State Bar.	)	**04-O-10090** **OPINION ON REVIEW AND ORDER**

I. INTRODUCTION

Respondent, Eric W. Conner, requests review of a hearing judge's decision recommending that he be disbarred due to misconduct in a single client matter in which the hearing judge found that respondent improperly obtained interests adverse to the client, misappropriated client funds, violated trust account rules, failed to competently perform, failed to provide an accounting, failed to promptly return the client's file, and committed multiple acts involving moral turpitude including preparing and submitting false documentation to the State Bar. Respondent seeks reversal of several of the culpability findings and the findings in aggravation and mitigation, and further asserts that disbarment is inappropriate.

Respondent also requests various modifications to the factual findings and legal conclusions. To the extent we agree, the opinion so reflects; otherwise, as more fully discussed below, we adopt the factual and culpability findings of the hearing judge, as modified.

We have independently reviewed the record (Cal. Rules of Court, rule 9.12; Rules Proc. of State Bar, rule 305(a); *In re Morse* (1995) 11 Cal.4th 184, 207), and adopt the recommendation that respondent be disbarred.

II. DISCUSSION

A. Factual and Procedural Background

Respondent was admitted to the practice of law in California on December 18, 1989, and has no prior record of discipline. His misconduct began in June 2002 and continued through July 2006.

On April 23, 2002, Janet Spitler entered into a retainer agreement with respondent wherein respondent would receive a legal fee of $10,000 to "[a]ttempt to prevent charges from being file [sic] (or) if charges are filed, [to] attempt to settle [the] case in federal court." The agreement further stated that the retainer did not cover the cost of taking the matter to trial and that "[a]dditional fees and retainer may be due if charges/forfeiture are filed."[1] At the time she employed respondent, Spitler held title to three California properties: 11311 Patterson Drive, Clearlake (Patterson), 11135 Lakeshore Drive, Clearlake (Lakeshore), and 5760 Live Oak, Kelseyville (Live Oak). The purchase of Patterson and Live Oak was financed entirely by Spitler's friend, Dennis Hunter, described by Spitler as a fugitive from the federal government.[2] After Hunter's arrest in or about March 2002, Spitler sought the services of an attorney because she believed the government might file criminal charges against her due to her association with Hunter.

A few days after the parties executed the retainer agreement for $10,000, respondent's personal assistant, Ray Robinson, advised Spitler that representation would cost $50,000 because the case was more involved than originally believed. After Spitler objected, she and Robinson orally agreed to a fee of $30,000. Although this modification to the fee agreement was never reduced to writing, Robinson had Spitler execute a deed of trust against the Lakeshore property

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[1]Although the retainer agreement indicates it was signed on April 23, 2001, the parties stipulated, and respondent testified, that the date of hire was actually April 23, 2002.

[2]Spitler testified that she contributed $12,900 toward the purchase of Lakeshore and made no mortgage payments on any of the three properties until after Hunter was incarcerated. She also testified that Hunter was running from the United States Drug Enforcement Agency "[b]ecause of growing marijuana."

to secure payment of the fees. This deed of trust was recorded with the Lake County assessor on June 11, 2002, and on its face indicates that it secures a promissory note in the principal sum of $30,000 in favor of respondent, the named beneficiary of the deed of trust.[3] According to respondent, he learned of the deed of trust only after it was recorded, but then did nothing to rescind it or otherwise negate its effect. At no time did respondent or Robinson advise Spitler in writing of her right to seek the advice of independent counsel before executing the deed of trust.

Because of the government's investigation of Hunter, Spitler wished to divest herself of the properties she obtained through him and to recover the funds she contributed for mortgage payments and the purchase of Lakeshore. She did not have the funds to pay respondent's fee and the parties understood that it would be paid from the proceeds of the sale of the properties. For this reason, Spitler believed the services respondent would provide under the retainer agreement included the sale of the properties. Respondent denied the retainer included such representation. Despite this, respondent represented Spitler throughout the sale of the properties without a separate written agreement for these services.

During its investigation, the United States Attorney's office came to believe that Hunter had used Spitler as a straw buyer for the Patterson, Lakeshore and Live Oak properties. As a result, when an offer was made for the purchase of the Patterson property, the federal government halted the sale. Due to the government's intervention in the Patterson sale, respondent and Spitler met with U. S. Attorney Stephanie Hinds, who informed them that the government was considering seizing Hunter's interest in the properties. Because Spitler's relationship with Hunter was still being investigated, the government agreed to allow the property sales to go forward provided that respondent retained the net proceeds in his client trust account. Soon thereafter, the Patterson property went into escrow again and Robinson requested that Hinds provide a letter authorizing release of the sales proceeds. On June 11, 2002, Hinds sent a letter to the escrow company confirming the government's agreement that the net proceeds

[3]Robinson testified that he also gave Spitler a quitclaim deed to the Live Oak property. Neither the quitclaim deed for Live Oak nor the promissory note related to the deed of trust on Lakeshore were included as exhibits.

could be released to respondent and maintained in trust. Two days after Hinds sent this letter, respondent made a demand on the escrow company for payment of attorney fees in the amount of $18,500. He did not provide a copy of the demand letter to Hinds. Spitler did not object to respondent's demand because she believed it was partial payment of the $30,000 fee. Similarly, when the Lakeshore property went into escrow, Hinds provided the escrow company – at Robinson's request – with a letter on July 1, 2002, again releasing the sales proceeds to respondent in trust. On July 2, 2002, respondent sent the escrow company a demand letter for $19,500 in outstanding legal fees. As with the Patterson property, respondent did not provide a copy of his demand letter to Hinds. Spitler knew that the additional $19,500 was $8,000 more than the $30,000 in fees she had agreed to pay, but she did not object because she could no longer afford the mortgage payments and needed to sell the property. Although Hinds assumed Robinson was an attorney, she neither contemplated attorney fees as legitimate closing costs nor authorized the withdrawal of attorney fees from the sales proceeds of either of the two properties. After respondent deducted his fees, the net proceeds from the sale of the Patterson and Lakeshore properties were $133.86 and $53,971.95, respectively, which respondent deposited into a client trust account in July 2002.

Three months later, Robinson offered to pay Spitler $2,000 on respondent's behalf in exchange for her authorization allowing respondent to borrow $25,000 of the entrusted funds, purportedly for telephone advertising. Because she was financially strapped, Spitler agreed to the loan and on October 30, 2002, executed a document which "authorize[d] the Law Office of Eric W. Conner to withdraw $25,000.00 from . . . funds that are currently being held in [trust.]" The authorization further stated that "The Law Office of Eric W. Conner hereby agrees to replenish the entire $25,000.00 withdrawn . . . ." At no time did respondent or Robinson advise Spitler in writing of her right to seek the advice of independent counsel before executing the loan authorization.

After withdrawing the loaned funds, respondent was required to maintain $29,105.01 in trust.[4] However, in October 2003, respondent wrote three checks totaling $18,637.81 against the trust account made payable to "CASH/Eric W. Conner" as follows: check number 1041 on October 1, 2003, in the amount of $5,000; check number 1042 on October 1, 2003, in the amount of $6,937.81; and check number 1002 on October 31, 2003, in the amount of $6,700. Respondent did not obtain authorization from either Spitler or the government before making these withdrawals. To date, respondent has not repaid any of the $18,637.81 he withdrew nor the $25,000 he borrowed.

Thereafter, the third property, Live Oak, went into foreclosure and was sold at auction. After Spitler received notice that $17,176.06 in surplus proceeds resulted from the foreclosure sale, Robinson completed paperwork for Spitler to receive those proceeds. On November 24, 2003, respondent deposited a check for that amount into his client trust account. He then provided Spitler with a check in the amount of $17,176.06, along with an invoice for $7,071.75 from an entity called Fast and Efficient Attorney Service (Fast and Efficient). Although Robinson owned Fast and Efficient, Robinson did not divulge that fact to Spitler even when he directed her to pay the bill. Spitler was unfamiliar with Fast and Efficient and attempted to ascertain the work it had performed by calling the telephone number on the invoice, but she could not reach a live person. When she left messages requesting a return call, Robinson would call her asking if she had paid the invoice. Spitler became suspicious and decided to retain new counsel.

By December 2003, Spitler had retained Marie Klopchic, who notified respondent by letter dated December 15, 2003, that his employment was terminated and requested the immediate delivery of all of Spitler's files. More than nine months later, on September 16, 2004, respondent made Spitler's files available. In her letter to respondent, Klopchic stated that Spitler would not pay the outstanding bill for $7,061.75 until she received her file, an itemization of

[4]This sum reflects $133.86 + $53,971.95 - $25,000.80. Although respondent's withdrawal slip and draft were written in the amount of $25,000, his bank processed the withdrawal in the amount of $25,000.80.

services rendered and a copy of all fee agreements. Despite this letter, respondent paid Robinson $7,061.75 on January 22, 2004, out of the funds he held in trust. Additionally, three more withdrawals from the entrusted funds were made after Spitler terminated respondent's employment, for a total of $1,000 as follows: $300 and $200 on December 19, 2003, and $500 on December 29, 2003. These funds were transferred to respondent's general operating account and were never refunded. Again, respondent did not obtain authorization from either Spitler or the government before making any of these withdrawals.

After a three-day trial on July 25-27, 2006, the hearing judge found respondent culpable on all but one of the charged counts and, upon considering the mitigating and aggravating circumstances, recommended respondent's disbarment.

B. Due Process

Respondent contends that he was denied due process in that the hearing judge excused Spitler rather than subject her to recall and because the hearing judge excluded a receipt that respondent asserts would have negatively impacted Spitler's credibility. We reject respondent's claims.

On the first day of trial, the State Bar conducted direct examination of Spitler, followed by respondent's cross-examination. After the State Bar completed redirect examination, respondent did not conduct recross-examination, but instead requested that Spitler be subject to recall. When the hearing judge asked for a showing of good cause why respondent could not ask his questions at that point in the trial, respondent's counsel stated, "It would depend on what testimony we get tomorrow from the government people." After determining that neither the State Bar nor respondent had subpoenaed Spitler, the hearing judge excused her. At no point after the government witnesses testified did respondent request that Spitler be recalled.

After direct and cross-examination, recall of a witness may be granted or withheld at the court's discretion in accordance with Evidence Code section 778.[5] Respondent extensively

[5]Evidence Code section 778 provides that "After a witness has been excused from giving further testimony in the action, he cannot be recalled without leave of the court. Leave may be granted or withheld in the court's discretion."

cross-examined Spitler and, after informing the hearing judge that he had no further questions once the State Bar completed redirect-examination, he failed to offer any justification for not excusing Spitler. Under these circumstances, we find that the hearing judge's exercise of her discretion to excuse the witness was sound. After the government witnesses testified, respondent failed either to request that Spitler be recalled or to make an offer of proof as to the testimony respondent expected to elicit from Spitler if she were recalled. As a result, we find that respondent failed to demonstrate error or prejudice in the hearing judge's decision to excuse Spitler. (See *People v. Thomas* (1992) 2 Cal.4th 489, 542; but see *People v. Raven* (1955) 44 Cal.2d 523, 526 [sufficient offer of proof was made to allow determination that trial court prejudicially erred in exercising discretion not to recall witness].)

During direct examination of Robinson, respondent's counsel asked to approach Robinson with an unidentified exhibit. After being shown the exhibit, the State Bar objected to it on several grounds, claiming that it had never been shown to them before, it constituted hearsay and it lacked foundation. Respondent's counsel explained that the exhibit was for purposes of rebuttal and the State Bar again objected, asserting that such rebuttal was improper. The hearing judge sustained the State Bar's objections without specifying which ones were the basis for her decision. Thereafter, respondent's counsel did not identify the exhibit for the record or attempt to have it admitted into evidence.[6] Nor did he make an offer of proof demonstrating the fact(s) the exhibit would have established. Under these circumstances, respondent failed to perfect his right to claim on appeal that the hearing judge improperly excluded the exhibit from evidence.

[6]The only evidence in the record that mentions this unidentified document comes from the following exchange between the hearing judge and respondent's counsel: "THE COURT: But why wasn't this receipt shown to Ms. Spitler on Tuesday? ¶ MR. JONES: Because I didn't have the receipt on Tuesday, your Honor."

C. Count One: Avoiding Interests Adverse to a Client (Rules Prof. Conduct, rule 3-300)[7]

Because respondent failed to comply with the prophylactic requirements of this rule when he obtained the deed of trust against the Lakeshore property and when he borrowed $25,000 from the funds held in trust, the hearing judge concluded that respondent willfully violated rule 3-300. Respondent does not contest this conclusion, and in light of his failure in both instances to advise Spitler in writing of her right to seek the advice of an independent attorney, we agree with the culpability finding of the hearing judge.

D. Counts Two and Seven: Failure to Maintain Client Funds in Trust Account (Rule 4-100(A))

Rule 4-100(A) provides that funds received for the benefit of clients shall be deposited into a trust account. "The rule absolutely bars use of the trust account for personal purposes, even if client funds are not on deposit." *Doyle v. State Bar* (1982) 32 Cal.3d 12, 22-23. Because respondent withdrew entrusted funds for his personal use in the amount of $18,637.81 ($5,000 + $6,937.81 + $6,700) in October 2003 as alleged in count two and in the amount of $8,061.75 ($300 + $200 + $500 + $7,061.75) between December 2003 and January 2004 as alleged in count seven, the hearing judge concluded that respondent failed to maintain client funds in trust. Respondent does not contest these conclusions and, based on our independent review of the record, we see no reason to disturb the culpability findings on these counts.

E. Counts Three and Five: Moral Turpitude – Misappropriation (Bus. & Prof. Code, § 6106)[8]

The hearing judge found that respondent misappropriated the $18,637.81 withdrawn from the trust account in October 2003 as well as the $8,061.75 withdrawn from the trust account in

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[7]Unless noted otherwise, all further references to rule(s) are to the Rules of Professional Conduct. Rule 3-300 precludes an attorney from entering into a business transaction with a client or knowingly acquiring an ownership, possessory, security, or other pecuniary interest adverse to a client unless the transaction or acquisition and its terms are fair and reasonable to the client and fully disclosed in writing, the client is advised in writing of the right to seek the advice of an independent lawyer, and the client consents in writing to the terms of the transaction or acquisition.

[8]Unless noted otherwise, all further references to section(s) are to the Business and Professions Code.

December 2003 and January 2004, thereby committing acts involving moral turpitude, dishonesty and/or corruption prohibited by section 6106. We agree.

Respondent argues that he should not be found culpable of willfully violating section 6106 because his misappropriations were the result of his gross negligence in failing to supervise Robinson adequately. The record indicates otherwise. Respondent testified that he authorized the trust account withdrawals in October 2003 because he was implementing an agreement with the government to split the proceeds from the sale of the Patterson and Lakeshore properties.[9] However, Hinds testified that such an agreement never existed and although Robinson testified that he drafted a memorandum of understanding setting forth the terms of the alleged agreement, respondent did not produce that document at trial. The hearing judge did not believe respondent's explanation, and neither do we. (See, e.g., *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 935, fn. 13 [when attorney fails to corroborate his testimony with evidence one would expect to be produced, it is a strong indication that his testimony is not credible].)

If such an agreement existed, respondent would have needed to draft only one check payable to the government rather than the three checks issued to "CASH/Eric W. Conner." Furthermore, respondent admitted at trial that the $6,937.81 check was deposited into his general operating account on October 23, 2003, and then used to pay bills. As we discuss in greater detail *post*, almost a year later, respondent purchased a cashier's check in the amount of $6,937.81 and deposited it in a second trust account in an attempt to deceive the State Bar that the funds had not been misappropriated. For these reasons, we find that respondent's actions were intentional and thus his October 2003 misappropriations violated section 6106.

Respondent testified at trial that he authorized the withdrawals totaling $1000 in December 2003 in order to pay the costs incurred for Robinson's paralegal fees. Since respondent expressly authorized these withdrawals, they were not the result of his failure to supervise Robinson, and thus violated section 6106.

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[9]According to respondent, the government agreed to accept $26,000, release $12,900 to Spitler and permit respondent to receive the remainder of the sales proceeds.

Respondent testified that since Spitler had terminated his services, he did not authorize Robinson to pay the Fast and Efficient invoice for $7,071.75 from the trust account. Instead, he claims that it was his understanding that Robinson would pay that bill with funds from respondent's general operating account. Nevertheless, respondent concedes that this misappropriation resulted from his gross negligence. We agree, and find that such laxity constitutes moral turpitude. (*Palomo v. State Bar* (1984) 36 Cal.3d 785, 796, fn. 8.) He not only allowed Robinson to simulate respondent's signature on trust account checks but he also failed to instruct Robinson in trust account requirements and did not undertake regular examination of either Robinson's records or the firm's bank statements. These slipshod procedures allowed a substantial sum of entrusted funds to be misappropriated without respondent's knowledge.

F. **Count Four: Moral Turpitude (§ 6106)**

At the time Klopchic notified respondent that Spitler had terminated his services and would not pay the outstanding bill of $7,061.75 until her file was returned and a full accounting rendered, respondent was away from his office on vacation. Using respondent's law office letterhead, Robinson answered Klopchic's letter on respondent's behalf. In order to dissuade Spitler from pursuing her legal remedies and to induce her to pay the outstanding Fast and Efficient invoice, Robinson drafted a letter that was a conglomeration of veiled threats to disclose Spitler's client confidences, to impute that Spitler was involved in a drug operation and money laundering, and to cause her financial harm by releasing her bank records to the government.[10]

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[10]This letter stated: "[S]ince it appears that Ms. Spitler is interested in pursuing a legal remedy, instead of paying the legal fees that she authorized, she should also be aware that if she sues, she may be waiving the attorney-client privilege. Therefore, in the event the federal government proceeds with criminal charges against Ms. Spitler for the money laundering, the U.S. Attorney's Office could force our staff . . . to testify regarding information disclosed . . . by Ms. Spitler, her dealings with Dennis Hunter, her involvement in his drug operation, and the fact that all of the proceeds are traceable to the exchange of a controlled substance. . . . ¶ Since it appears our services are terminated, we will advise the U.S. Attorneys [sic] Office accordingly and will be turning all of the remaining drug proceeds, minus any outstanding legal fees, over to the United States Department of Treasury, pursuant to a federal warrant. In addition, we will be providing the Bank of the West records, including a copy of the check issued to Ms. Spitler regarding the drug proceeds from the Lake Property, over to the U.S. Attorneys [sic] Office, pursuant to a federal warrant. . . . ¶ In addition, should Ms. Spitler proceed with legal action

The hearing judge determined that the threat to betray attorney-client privileges and to deliver the remaining entrusted funds to the United States government constituted extortion intended to avoid a lawsuit by Spitler and to coerce payment of the $7,061.75 bill. Because respondent became aware of the letter while on vacation but did nothing to retract it, the hearing judge concluded that respondent's ratification of the letter constituted an act involving moral turpitude in violation of section 6106. We agree.

Respondent contends that while Robinson's letter was clearly unwise and unprofessional, it did not meet the legal definition of extortion since it does not threaten illegal action.[11] His argument is unavailing because "Extortion has been characterized as a paradoxical crime in that it criminalizes the making of threats that, in and of themselves, may not be illegal." (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 326.) Irrespective of whether the letter met the legal requirements of extortion, it clearly was serious overreaching and compromised respondent's fiduciary duties to his client, which constituted moral turpitude. (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 959 [attorney's overreaching of his clients constituted acts of moral turpitude].)

G. **Count Six: Failure to Perform with Competence (Rule 3-110(A))**

The focus of our inquiry on the charge of failing to act competently is whether respondent intentionally, recklessly, or repeatedly failed to apply the diligence, learning and

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against this office, she should be aware that Mr. Conner *aggressively defends* legal actions and may pursue legal remedies from Ms. Spitler for, inter alia, malicious prosecution and fraud. Ms. Spitler is well aware of her activities and it would be, at the very least, malicious for her to proceed with a frivolous lawsuit in an effort to force the release of drug proceeds that belong to the United States government or to avoid paying a bill for work performed on her behalf that she clearly authorized."

[11]"Extortion is the obtaining of property from another, with his consent . . . induced by a wrongful use of force or fear . . . ." (Pen. Code, § 518.) Fear, for purposes of extortion, "may be induced by a threat, either: [¶] 1. To do an unlawful injury to the person . . . threatened . . . or, [¶] . . . [¶] 3. To expose, or to impute to him . . . any deformity, disgrace or crime; or, [¶] 4. To expose any secret affecting him . . . ." (Pen. Code, § 519.) "Every person who, with intent to extort any money or other property from another, sends or delivers to any person any letter or other writing, whether subscribed or not, expressing or implying, or adapted to imply, any threat such as is specified in Section 519, is punishable in the same manner as if such money or property were actually obtained by means of such threat." (Pen. Code, § 523.)

skill, as well as the mental, emotional, and physical ability, reasonably necessary to discharge the duties arising from his employment. (Rule 3-110(A).) In this case, respondent not only allowed Robinson to conduct all negotiations with Spitler regarding the $30,000 deed of trust and the subsequent $25,000 loan but also permitted Robinson to conduct most of the negotiations with Hinds to obtain the letters of release of the net proceeds from the sale of the properties. Robinson's involvement was so extensive that Hinds assumed he was an attorney. Furthermore, respondent granted Robinson unchecked authority over the law office accounts without providing adequate supervision or training, resulting in significant misappropriations. Respondent claimed at trial that he reprimanded Robinson in December 2003 after learning that the check for $6,937.81 had been deposited into his general operating account. Even if we accept this statement as true, respondent nevertheless continued to cede the day-to-day operations of the firm and control over the firm's accounts to Robinson without limitation, resulting in additional misappropriations in December 2003 and January 2004. We therefore agree with the hearing judge that respondent's abdication of his duty to supervise Robinson properly evidences a reckless failure to perform legal services competently in violation of rule 3-110(A). (See, e.g., *In the Matter of Malek-Yonan* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627, 634 [attorney who abdicated responsibility to properly supervise her trust account and non-attorney staff was found culpable of violating rule 3-110(A)].)

H. **Count Twelve: Moral Turpitude (§ 6106)**

In order to facilitate our analysis, we discuss count twelve out of order. During the investigation of this matter, respondent provided the State Bar with two invoices dated April 23, 2001,[12] and June 14, 2002,[13] detailing legal services respondent claims were provided in representing Spitler. Respondent also gave the State Bar seven binders of memoranda and research dated June 15, 2001, through February 28, 2003, which he asserts contained work

[12]This invoice itemizes legal services allegedly provided between April 1, 2001, to May 11, 2002, for a total of $27,170 in legal fees.

[13]This invoice itemizes legal services allegedly provided between June 14, 2002, to December 29, 2003, for a total of $27,046.40 in legal fees.

product prepared while representing Spitler. The hearing judge concluded that the billing statements and binders of alleged work product were fraudulent and that respondent created them to deceive the State Bar into believing that his office actually performed services for Spitler to justify the fees collected.

Respondent contends that the hearing judge's determination was made without any reliable evidentiary support. On the contrary, numerous discrepancies support the hearing judge's conclusion that the billing statements were false. The first invoice was dated one year before Spitler even hired respondent. Twenty-eight items on this invoice totaling $25,980 in fees were for services allegedly performed before respondent's date of hire.[14] At trial, respondent offered inconsistent explanations for this error.[15] Another discrepancy is the fact that on June 13, 2002, respondent requested the escrow company to release only $18,500 in legal fees from the sales proceeds of the Patterson property when respondent's invoice indicated that Spitler owed $27,170 in fees as of May 11, 2002. A similar incongruity exists regarding respondent's July 2, 2002, request to the escrow company for legal fees of $19,500 from the sales proceeds of the Lakeshore property while his invoice showed that $20,145 in legal fees were owed at that time.[16] Respondent failed to explain the gap between his demands for payment and the amount of the legal fees allegedly owed according to his own invoices.

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[14]According to this invoice, twenty separate billable events occurred between April 1, 2001, and December 8, 2001, for a total of $21,050 in fees; eight separate billable events occurred between January 11, 2002, and April 6, 2002, for an additional $4,930 in fees, and two billable events occurred on May 10-11, 2002, for an additional $1,190 in fees.

[15]Respondent first testified that invoice entries were "off by a year" so that work performed in 2001 actually should have reflected a 2002 date. After trial counsel pointed out that this would cause certain invoice entries to overlap with charges that purportedly occurred in 2002, respondent altered his explanation to assert that services provided in 2002 were actually performed in 2003. Upon further questioning, respondent excluded from his explanation invoice entries with a 2003 date because adding a year to those dates would have resulted in work being performed after Spitler terminated his services.

[16]According to respondent's June 14, 2002, invoice, he provided legal services totaling $11,475 between June 14, 2002, and July 2, 2002. In addition, $8,670 ($27,170 - $18,500) was still owed from the April 23, 2001, invoice after respondent received payment from the sale of the Patterson property. Thus, by July 2, 2002, respondent's outstanding legal fees totaled $20,145 ($11,475 + $8,670).

Another conflict is the fact that, according to the invoices, respondent continued to claim legal fees after Spitler's case became inactive. Respondent testified that after he and Spitler met with Hinds in July 2002 and reached agreement concerning the sale of the properties, Spitler was no longer the target of a federal indictment. Spitler's case became "kind of in limbo," and respondent did not know why the government delayed in determining disposition of the proceeds from the sale of the properties.[17] Despite the fact that the government did not file criminal charges against Spitler or pursue any forfeiture claim against the sales proceeds, respondent billed an additional $14,571.40 in legal fees from August 2, 2002, to November 14, 2003. At the same time he admitted that Spitler's case was dormant, respondent inconsistently claimed that additional services were justified because the government was "gearing up for litigation."

Furthermore, at trial respondent incredibly asserted that the $25,000 of the sales proceeds withdrawn from his trust account in October 2002 was not a loan from Spitler for telephone advertisements, but an advance for fees he needed to prepare for the "anticipated litigation." Yet another inconsistency is the fact that respondent charged $1,000 for legal services allegedly provided on December 19 and 29, 2003, after Spitler terminated his services on December 15, 2003.

The seven binders of work product containing memoranda and copies of cases are also replete with discrepancies. More than half of these binders contain alleged work product that predates respondent's employment.[18] Furthermore, almost half of the memoranda included copies of cases that the memoranda did not even reference. Copies of cases and statutes obtained via the internet were altered by white-out or by removing the bottom portion of the printed pages to delete the date on which the documents were printed. Robinson's explanation was that the original cases and statutes were inexplicably discarded and had to be reprinted at a later date, and he did not want the date of reprinting to be apparent. However, because several of the purported

[17]Hinds testified that the delay was due in part to respondent's failure to provide the final closing statement on the Lakeshore property. As a result, the government's investigation became dormant, and it moved on to other cases.

[18]Between June 15, 2001, and April 6, 2002, legal research was allegedly completed in Spitler's matter on 22 different occasions.

research memoranda contained altered copies of cases that the memoranda never mentioned, Robinson had no way of knowing they needed to be reprinted. Thus, we find it unbelievable that Robinson was able to recall years later which cases needed to be reprinted.

Respondent next argues that even if these documents were fraudulent, there is no evidence that he had any knowledge of or involvement with them. The record renders such an argument entirely untenable. Respondent and Robinson each testified that respondent not only reviewed the invoices but authorized the charges. Furthermore, Robinson testified, and respondent did not refute, that Robinson provided him with the binders of memoranda before they were given to the State Bar. Based on these numerous inconsistencies as well as the fact that respondent never provided Spitler with any invoices, memoranda, research or other work product, we agree with the hearing judge's determination that the invoices and binders of memoranda provided by respondent were fraudulent and created after the fact in an attempt to justify respondent's fees. Accordingly, we conclude that respondent's conduct constitutes moral turpitude.

I. **Count Eight: Failure to Account (Rule 4-100(B)(3))**

Rule 4-100(B)(3) requires an attorney to maintain complete records of all client funds coming into possession of the attorney and to render appropriate accounts to the client regarding those funds. There is no evidence that respondent ever provided Spitler with the accounting Klopchic requested on her behalf. The invoices dated April 23, 2001, and June 14, 2002, do not satisfy the requirements of this rule since respondent provided them to the State Bar in this disciplinary proceeding, not to Spitler and her attorney as requested. Furthermore, even if respondent had given them to Spitler, they are wholly inadequate since they only account for $54,216.40 in alleged fees while respondent obtained at least $63,000 in fees ($18,500 + $19,500 + $25,000). In addition, these invoices fail to indicate that respondent withdrew an additional $7,061.75 of entrusted funds to pay the outstanding Fast and Efficient invoice. For these reasons, we agree with the hearing judge's conclusion that respondent willfully violated rule 4-100(B)(3).

J. **Count Nine: Failure to Return Client File (Rule 3-700(D)(1))**

Rule 3-700(D)(1) requires an attorney whose employment has terminated to promptly release to a client, at the client's request, all of the client's papers and property. Because respondent did not release Spitler's file until September 2004, approximately nine months after Klopchic requested it in December 2003, the hearing judge concluded that respondent violated rule 3-700(D)(1). Respondent does not contest this culpability finding on appeal. Based on our independent review of the record, we agree with the finding of the hearing judge. (See *In the Matter of Brockway, supra*, 4 Cal. State Bar Ct. Rptr. at p. 958 [delay of two months in returning a client's file is sufficient to find a violation of rule 3-700(D)(1)].)

K. **Count Ten: Unconscionable Fee (Rule 4-200(A))**

Rule 4-200(A) prohibits an attorney from entering into an agreement for, charging, or collecting an illegal or unconscionable fee. The hearing judge concluded that respondent collected $60,061.75 in excess of the $10,000 flat fee he was entitled to under the retainer agreement and that this excess fee was exorbitant and so disproportionate to the services performed as to shock the conscience.

Although we agree with the hearing judge's conclusion that respondent violated the unconscionability provisions of rule 4-200, we do so on different grounds. Respondent collected the following amounts as fees: $18,500 from the Patterson sales proceeds in June 2002; $19,500 from the Lakeshore sales proceeds in July 2002; and $25,000.80 in October 2002. According to the retainer agreement, additional fees would be due *only* if the government filed criminal charges or a forfeiture proceeding. Even though neither contingency occurred, respondent authorized Robinson to conduct research in forfeiture law allegedly related to Spitler's case on at least 22 occasions after Spitler's case became inactive. Respondent collected $15,571.40 in fees for legal research in forfeiture law performed either while the case was dormant or after respondent's services had been terminated. Respondent neither obtained Spitler's approval to conduct this research nor provided her with invoices or work product pertaining to it. Since the condition precedent did not occur, there was no provision in the retainer agreement authorizing respondent even to commence this research. By collecting an unauthorized fee of $15,571.40,

respondent violated the unconscionability provisions of rule 4-100. (See *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 990 [attorney's collection of unauthorized fee violated rule 4-200(A)]; *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct Rptr. 838, 855 [attorney's attempt to charge and collect more than was due under his fee agreement constitutes a violation of rule 4-200(A)].)

Even if this research were authorized under the terms of the retainer agreement, respondent still would have run afoul of rule 4-200(A) since it was performed unnecessarily and constituted a practical appropriation of entrusted funds. Respondent admitted that he did not provide any substantive legal services after Spitler's case went inactive in July 2002 other than to review some of Robinson's research. Although respondent did not even bother to review all of Robinson's legal memoranda, he nevertheless charged Spitler for them. Also, respondent testified that he was experienced in forfeiture law before Spitler's retention of him, and had handled approximately five to ten forfeitures annually. Yet, despite his prior experience, respondent authorized Robinson to conduct research and generate memoranda, some of which were a mere half-page in length, on topics that were neither novel nor complex, such as Affirmative Defenses, Lack of Knowledge and Innocent Owner as Defense. Worse, this research took place while Spitler's case was inactive. We find that respondent's authorization of such unnecessary research evidences overreaching on his part and his collection of fees for such research "under the circumstances, constituted a practical appropriation of [entrusted] funds. [Citation.]" (*Bushman v. State Bar* (1974) 11 Cal.3d 558, 563.)

L. **Count Eleven: Moral Turpitude (§ 6106)**

The hearing judge concluded that respondent's charging and collecting unconscionable fees constituted acts of moral turpitude. Respondent argues that even if he were culpable of charging and collecting unconscionable fees, his conduct did not rise to the level of moral turpitude. We disagree.

Spitler was vulnerable and emotionally distressed. In fact, shortly after retaining respondent, the pending government investigation caused Spitler to become extremely depressed and even hospitalized. Respondent suspected that Spitler was suffering from depression and

testified that he knew she was "mentally unstable." He took advantage of her vulnerable situation by billing her in excess of the $10,000 originally authorized by the retainer agreement, and also charging her $8,000 more than the $30,000 fee Spitler later authorized orally. Even when it became apparent that the government would not criminally charge Spitler or seek forfeiture of the sales proceeds, respondent further breached his fiduciary duty by authorizing and billing for unnecessary research. We find respondent's exploitation of a vulnerable client to be overreaching and an act of moral turpitude. (See *In the Matter of Brockway, supra,* 4 Cal. State Bar Ct. Rptr. at p. 959 [attorney's overreaching of his clients constituted acts of moral turpitude].)

M. **Count Thirteen: Failure to Cooperate with the State Bar (§ 6068, subd. (i))**

For providing fraudulent invoices and work product, the State Bar charged respondent with failing to cooperate with its disciplinary investigation. The hearing judge concluded that respondent's deception was an act involving moral turpitude rather than a failure to cooperate. Neither party challenges this conclusion on appeal. Based on our independent review of the record, we do not disturb the hearing judge's determination on this count and dismiss it with prejudice.

III. FACTORS IN AGGRAVATION AND MITIGATION

I. **Aggravation**

We agree with the hearing judge's determination that respondent engaged in multiple acts of wrongdoing. Respondent improperly obtained interests adverse to his client, misappropriated entrusted funds, willfully failed to supervise his assistant Robinson, collected unconscionable fees, and committed multiple acts involving moral turpitude. These actions support a finding in aggravation that respondent engaged in multiple acts of misconduct. (See *In the Matter of Malek-Yonan, supra,* 4 Cal. State Bar Ct. Rptr. 627 [two violations of failure to supervise resulting in trust fund violations, plus improper threat to bring criminal action constituted multiple acts of wrongdoing in aggravation]; Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(ii).[19])

The hearing judge also considered as an aggravating circumstance respondent's attempt to conceal his misappropriations. After the State Bar began its investigation of this matter, respondent opened a second trust account on September 22, 2004, and deposited into it four cashier's checks, all purchased in September 2004. Two of these checks were for $6,937.81 and $6,700, respectively, and corresponded to the amounts respondent misappropriated from Spitler in October 2003. During trial, respondent admitted that he structured the transactions to create the false appearance that he had maintained the funds in the form of cashier's checks from the time he misappropriated them until they were deposited into the second trust account. Because of this, the hearing judge concluded that respondent's misconduct was surrounded by bad faith, dishonesty, concealment and overreaching. (Std. 1.2(b)(iii).) We believe it more appropriate to view respondent's attempt to deceive the State Bar as an aggravating circumstance under standard 1.2(b)(iii) because it was an act involving moral turpitude, constituting an uncharged violation of section 6106.[20]

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[19]All further references to standard(s) are to these provisions.

[20]We reject respondent's argument that this finding is duplicative of his substantive violations. The fact that respondent fraudulently created a second trust

The hearing judge also found that respondent displayed a lack of candor during trial under standard 1.2(b)(vi),[21] and we agree. The hearing judge concluded that respondent falsely claimed that the $25,000 withdrawal in October 2003 represented additional attorney fees and that he lied to the court about an agreement with the government for distribution of the sales proceeds from the properties. The explicit language of the authorization signed by Spitler indicates that respondent was to repay the $25,000 loan, and even Robinson testified that the funds were to be used for advertising rather than legal fees. Additionally, as we discussed *ante*, there is ample evidence in the record that there never was an agreement with the government to distribute the sales proceeds respondent held in trust.

Hunter ultimately sued Spitler for the sales proceeds, and that case was still pending during trial in this proceeding. At the time of trial, Spitler had incurred approximately $60,000 in legal fees defending herself in the Hunter lawsuit. Respondent claimed that he interpleaded approximately $32,000 of the entrusted funds[22] as a result of the Hunter suit. Since Hunter's action against Spitler caused her to incur considerable legal expenses, the hearing judge found that she was significantly harmed by respondent's misconduct. (Std. 1.2(b)(iv).) Respondent argues that Hunter would have sued Spitler for recovery of the sales proceeds regardless of his ethical misconduct. Even if that were the case, as a result of respondent's misconduct, only $32,000 of the $54,105.81 in net sales proceeds were available for Spitler to negotiate settlement with Hunter, thus significantly harming her.

We also agree with the hearing judge's finding that respondent demonstrated indifference toward rectification under standard 1.2(b)(v) due to his failure to refund the entire amount he misappropriated. Respondent misappropriated $26,699.56 ($18,637.81

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account to deceive the State Bar was not relied upon to support a finding of culpability for any ethical violations or other aggravating circumstance.

[21]The hearing judge inadvertently referred to this standard as 1.2(b)(iii).

[22]Respondent provided no documentary evidence to support this claim.

+ $8,061.75) and improperly borrowed $25,000.80. Of the $50,700.36 in entrusted funds he converted, only $32,000 had apparently been interpleaded. We find respondent's failure to make full restitution to be an aggravating factor under standard 1.2(b)(v). (See *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583, 594.)

II. **Mitigation**

We do not adopt the hearing judge's finding that there was no evidence of mitigation. Respondent practiced law for approximately twelve and one-half years with no prior record of discipline. However, due to the seriousness of his misconduct, the hearing judge found that respondent's lack of prior discipline was not a mitigating circumstance.

According to standard 1.2(e), "Circumstances which *shall* be considered mitigating are: [¶] (i) [the] absence of any prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious . . . ." (Italics added.) Therefore, mitigative credit must be given in a disciplinary proceeding where an attorney sufficiently proves the absence of a prior record of discipline over many years and where the misconduct is not deemed serious. While standard 1.2(e) describes instances when consideration of certain mitigating circumstances is mandatory, it is by no means an exclusive list of every factor that may be considered in mitigation. Indeed, the Supreme Court and this court routinely have considered the absence of prior discipline in mitigation even when the misconduct was serious. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 31, 32, 36, 39 [mitigative credit given for almost twelve years of discipline-free practice despite intentional misappropriation and commingling]; *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576 [mitigation acknowledged for absence of prior record of discipline in twelve years of practice despite willful misappropriation of over $29,000]; *In re Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59 [credit given for no prior history of discipline in fourteen years of practice where attorney converted client funds and deceived clients].) Therefore, we consider respondent's practice of law for over 12 years with no prior record of discipline to be a

mitigating factor. (See *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [over 10 years of practice before first act of misconduct given mitigative weight].)

We also find that respondent cooperated with the State Bar by entering into a factual stipulation as to background facts, which should be considered in mitigation. Although the stipulated facts were not difficult to prove (compare *In the Matter of Silver* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 902, 906 [attorney afforded substantial mitigation for his cooperation by stipulating to facts not easily provable]) and did not admit culpability, they were, nevertheless, extensive, relevant, and assisted the State Bar's prosecution of the case since respondent stipulated to the authenticity of certain exhibits and agreed to the admissibility of several other exhibits. Thus, under these circumstances, we accord respondent limited mitigation under standard 1.2(e)(v) for his cooperation in entering a stipulation as to facts and admissibility of exhibits. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190.)

III. **Level of Discipline**

The hearing judge recommended that respondent be disbarred. The State Bar agrees with the hearing judge's recommendation and urges us to affirm it. Respondent, on the other hand, asserts that his misconduct warrants no more than a one-year actual suspension.

We have found respondent culpable of improperly obtaining interests adverse to a client, trust account violations, intentionally misappropriating $26,699.56, failing to competently perform, failing to account, failing to return a client's files, collecting an unconscionable fee, and three separate counts involving moral turpitude. Respondent's unethical behavior is aggravated by multiple acts of misconduct, uncharged misconduct involving moral turpitude, lack of candor, indifference toward rectification, and significant harm to his client. Particularly disturbing is the fact that some of respondent's acts involving moral turpitude stemmed from his lack of candor to the State Bar and to this court. His limited mitigation consists of a twelve-and-one-half year career with no record of discipline as well as cooperation with the State Bar's investigation.

We observe that the purpose of attorney discipline is not the punishment of attorneys but the protection of the public, the preservation of confidence in the legal profession, and the maintenance of the highest professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; std. 1.3.) In determining the appropriate level of discipline, we afford "great weight" to the standards. (*In re Silverton* (2005) 36 Cal.4th 81, 92.) Nevertheless, we are "'not bound to follow the standards in talismanic fashion. [W]e are permitted to temper the letter of the law with considerations peculiar to the offense and the offender.' [Citations.]" (*In the Matter of Van Sickle, supra,* 4 Cal. State Bar Ct. Rptr. at p. 994.) We also consider relevant decisional law. (See *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059.)

Several standards apply to respondent's misconduct which provide for sanctions ranging from reproval to disbarment. (See stds. 2.2(a), 2.3, 2.4(b), 2.7, and 2.8.) We consider standard 2.2(a) controlling since it mandates the most severe sanction of disbarment.[23] Respondent misappropriated $26,699.56, a significant amount. (See *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1367-1368 [misappropriation of $1,355.75 considered significant].) Thus, the issue before us in assessing the appropriate level of discipline is whether respondent has shown that the "most compelling mitigating circumstances clearly predominate . . . ." (Std. 2.2(a).) Clearly, they do not.

[23]This standard provides that "Culpability of a member of willful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of the funds or property misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a one-year actual suspension, irrespective of mitigating circumstances."

Indeed, respondent's multiple circumstances in aggravation, particularly those involving concealment, his lack of candor, and his indifference toward rectification outweigh any militating effect his mitigating factors might have.

Turning to the relevant case law, we conclude that respondent's facts warrant disbarment under the provisions of standard 2.2(a). "The wilful misappropriation of client funds is theft. [Citation.]." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221.) "In a society where the use of a lawyer is often essential to vindicate rights and redress injury, clients are compelled to entrust their claims, money, and property to the custody and control of lawyers. In exchange for their privileged positions, lawyers are rightly expected to exercise extraordinary care and fidelity in dealing with money and property belonging to their clients. [Citation.] Thus, taking a client's money is not only a violation of the moral and legal standards applicable to all individuals in society, it is one of the most serious breaches of professional trust that a lawyer can commit." (*Ibid.*) " ' "The usual discipline imposed for such a breach is disbarment, in the absence of strong mitigating circumstances. (Citations.)" ' " (*Ibid.*) "An attorney who deliberately takes a client's funds, intending to keep them permanently, and answers the client's inquiries with lies and evasions, is deserving of more severe discipline than an attorney who has acted negligently, without intent to deprive and without acts of deception." (*Edwards v. State Bar, supra,* 52 Cal.3d at p. 38.)

In *Grim v. State Bar* (1991) 53 Cal.3d 21, the Supreme Court disbarred an attorney who willfully misappropriated $5,546 from a client. Although the attorney displayed good character, candor and cooperation, the Supreme Court concluded that this "[did] not constitute compelling mitigation in view of the various circumstances in aggravation," which included a prior reproval for commingling and failing to competently perform six years earlier, failure to timely pay restitution, and uncharged misconduct involving taking advantage of an out-of-state client and mismanagement of his trust account. (*Id*. at pp. 35-36.) Furthermore, the Supreme Court found that "The misappropriation in this case . . . was not the result of carelessness or mistake; petitioner

acted deliberately and with full knowledge that the funds belonged to his client. Moreover, the evidence supports an inference that petitioner intended to permanently deprive his client of her funds . . . ." (*Id*. at p. 30.)

In *Chang v. State Bar* (1989) 49 Cal.3d 114, the Supreme Court disbarred an attorney who willfully misappropriated $7,898.44. In conjunction with the misappropriation, the attorney failed to render an accounting and misrepresented to the State Bar the surrounding circumstances. During trial, he displayed a lack of candor to the court by contending that his client agreed to pay him a contingency fee. The attorney's actions involved a course of conduct designed to conceal his misappropriation that was deliberate rather than the result of negligence or inexperience. His conduct was aggravated by harm to the client, failure to make restitution, and failure to acknowledge any wrongdoing. (*Id*. at pp. 123-124.) Although the attorney had practiced eight years with no prior disciplinary record, the Supreme Court concluded that this was insufficient to avoid disbarment, particularly since the Supreme Court doubted whether the attorney would conform his future conduct to the professional standards due to his failure to acknowledge the impropriety of his conduct, his failure to reimburse the client, and his lack of candor before the State Bar, which manifested a disrespect for the Bar's authority. (*Id*. at pp. 128-129.)

In *Kaplan v. State Bar* (1991) 52 Cal.3d 1067, the Supreme Court disbarred an attorney who misappropriated checks payable to his law firm and a check from a client trust fund totaling approximately $29,000. When confronted by his managing partner, the attorney repeatedly denied knowledge of the missing checks and then claimed they were needed to help pay for necessary medical treatment for his father. The attorney later misrepresented to the State Bar that he used the money to finance medical treatment for his mother-in-law and claimed he spent $100,000 of his own funds on treatment. The attorney later confessed that he made no such expenditures and used the misappropriated funds to maintain a standard of living beyond his means. (*Id*. at p. 1069.) The attorney had practiced for more than 11 years without prior discipline, paid restitution, produced

16 character witnesses and presented evidence that he was suffering from emotional problems related to his marriage and his mother-in-law's illness. The court determined this evidence was insufficient to avoid disbarment because the attorney's conduct was part of a purposeful design to defraud and would not have ceased absent the action of the attorney's partners. (*Id*. at pp.1071-1072.)

Like the attorneys in *Grim*, *Chang* and *Kaplan*, respondent's case involves significant aggravating factors, an absence of compelling mitigation, and conduct designed to conceal misappropriations which were not the result of negligence or inexperience. As in *Grim*, the evidence supports an inference that respondent intended to permanently convert entrusted funds. Analogous to the facts in *Kaplan*, respondent displayed a lack of candor to the State Bar and before the State Bar Court. This is particularly crucial since the Supreme Court has held that "'fraudulent and contrived misrepresentations to the State Bar' may constitute perhaps a 'greater offense' than misappropriation. [Citation.]" (*Cain v. State Bar* (1979) 25 Cal.3d 956, 961.)

Based on this record, we can glean no assurance that the public will be protected against future acts of misconduct. Therefore, as the Supreme Court concluded in *Chang* at p. 129, we similarly determine that "The risk that [respondent] may engage in other professional misconduct if allowed to continue practicing law is sufficiently high to warrant his disbarment. [Citations.]" For these reasons, we conclude that the absence of compelling mitigating circumstances combined with respondent's significant misappropriations, his attempt to conceal them after the fact, and his lack of candor to the State Bar and the State Bar Court warrant his disbarment.

IV. RECOMMENDATION

We therefore recommend that respondent ERIC W. CONNER be disbarred from the practice of law in this state and that his name be stricken from the roll of attorneys licensed to practice. We further recommend that he be ordered to comply with the provisions of rule 9.20 of the California Rules of Court and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the

effective date of the Supreme Court's order in this matter. We further recommend that the State Bar be awarded costs in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

V. ORDER OF INACTIVE ENROLLMENT

In view of our disbarment recommendation, it is ordered that respondent be enrolled as an inactive member of the State Bar. (Bus. & Prof. Code, § 6007, subd. (c)(4).) The inactive enrollment is effective three days after service of this opinion. (Rules Proc. of State Bar, rule 220(c).)

WATAI, Acting P. J.

We concur:

EPSTEIN, J.

HONN, J.*

*By designation of the Presiding Judge, Judge Richard Honn sat in place of Judge Joann Remke, who was disqualified.